

GUIDE to the BASIC EEO Requirements Under Executive Order 11246
for SMALL BUSINESSES WITH FEDERAL CONTRACTS

Notice: OFCCP is in the process of updating this material due to recent regulatory and/or other changes.

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Introduction

This guide is designed to give small businesses that have Federal contracts or subcontracts an introduction to the basic equal employment opportunity (EEO) requirements of Executive Order 11246, as amended, and its implementing regulations, which prohibit employment discrimination by Federal contractors and subcontractors and federally-assisted construction contractors and subcontractors. Executive Order 11246 also requires Federal contractors and subcontractors and federally-assisted construction contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment without regard to race, color, religion, sex, or national origin.

The United States Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) administers and enforces Executive Order 11246 and its implementing regulations. OFCCP also enforces Section 503 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified individuals with disabilities, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, which prohibits discrimination against qualified protected veterans.

This guide is intended for contractors that have nonconstruction contracts, which are also referred to as "supply and service" contracts. This guide is also for subcontractors that furnish supplies or services that are necessary to perform a Federal contract. While the basic EEO requirements are the same for all contractors and subcontractors, both construction and nonconstruction, a different set of affirmative action requirements have been established for contractors that have construction contracts. If your business has a Federal construction contract or a contract for construction work that is paid for with Federal funds, the affirmative action requirements that apply only to Federal or federally assisted construction contractors and subcontractors are set forth in the regulations in 41 CFR Part 60-4, http://www.dol.gov/dol/allcfr/ESA/Title_41/Part_60-4/41CFR60-4.1.htm and explained in OFCCP's Technical Assistance Guide for Federal Construction Contractors <http://www.dol.gov/esa/ofccp/TAGuides/ctaguide.htm>.

The basic EEO requirements of Executive Order 11246 are discussed in this guide. In addition to the basic EEO requirements, the regulations implementing Executive Order 11246 require supply and service contractors - generally, those with 50 or more employees and a contract of \$50,000 or more - to develop and maintain a written affirmative action program (AAP). A detailed description of the written AAP requirements is beyond the scope of this guide. However, the AAP requirements for supply and service contractors are contained in 41 CFR Part 60-2, and guidance about how to comply with the AAP requirements is provided in the Federal Contract Compliance Manual, which is available on the OFCCP website at <http://www2.dol.gov/esa/regs/compliance/ofccp/fccm/fccmanul.htm>. Also, a sample AAP is provided at <http://www.dol.gov/esa/regs/compliance/ofccp/pdf/sampleaap.pdf>.

This guide describes practical steps that can be taken to comply with some of these requirements. This guide is divided into three parts. Part I explains the basic EEO requirements of Executive Order 11246 and its implementing regulations. Part II provides examples of effective employer practices that foster equal employment opportunity and can

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help small businesses comply with some of their AAP requirements. Part III contains a directory of OFCCP offices.

Contractors have considerable flexibility in devising practices and programs that promote equal employment opportunity. The employer practices found in the guide are illustrative and should not be construed as requirements. Moreover, this guide does not create new or change current legal requirements.

I. Basic EEO Requirements Under Executive Order 11246

What is OFCCP?

OFCCP is an agency within the U.S. Department of Labor's Employment Standards Administration. OFCCP has a national network of six Regional Offices, each with District and Area Offices in major metropolitan cities.

OFCCP conducts compliance evaluations to determine whether a contractor is complying with its obligation to maintain nondiscriminatory employment practices. OFCCP also investigates complaints filed against a Federal contractor that suggest discrimination against a group of individuals or discrimination that is systemic in nature. If the complaint alleges that a Federal contractor discriminated against an individual, OFCCP will refer the complaint to the Equal Employment Opportunity Commission (EEOC) for processing.

OFCCP encourages voluntary compliance and provides compliance assistance regarding the requirements of the EEO laws that apply to Federal contractors and subcontractors. You may find out more about OFCCP by accessing our website at <http://www.dol.gov/esa/ofccp/index.htm>.

How do I know if I am a Federal contractor or subcontractor subject to Executive Order 11246?

Basically, all Federal contracts and subcontracts are covered under Executive Order 11246 unless specifically exempted. Contracts and subcontracts of less than \$10,000 generally are exempt from coverage under Executive Order 11246, though some contracts under that amount are covered, e.g. bills of lading. The regulations implementing the Executive Order exempt certain contracts and categories of contracts. The regulations contain exemptions for contracts involving work performed outside the United States; certain contracts with State or local governments; contracts with religious corporations, associations, and educational institutions; and contracts involving work on or near an Indian reservation. For a description of the exemptions, see the regulations at 41 CFR 60-1.5 http://www.access.gpo.gov/nara/cfr/waisidx_02/41cfrv1_02.html#60-1.

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Additional assistance for determining whether a business is a Federal contractor may be found on DOL's e-laws website at http://www.dol.gov/elaws/aud_fedcon.asp.

What is a Federal contract or subcontract?

A "Federal contract" is any agreement between a department or agency of the Federal Government and any person for the purchase, sale, or use of goods or services.

A "Federal subcontract" is an agreement or arrangement with a Federal contractor either (1) for the furnishing of supplies or services or for the use of real or personal property, which is necessary to the performance of any one or more Federal contracts; or (2) under which any portion of the Federal contractor's obligation under any contracts is performed, undertaken, or assumed. Thus, some but not all contracts with a Federal contractor will trigger coverage under the laws administered by OFCCP.

What are the basic EEO requirements of a Federal Contractor?

The basic EEO requirements of a Federal contractor are:

- Don't Discriminate
- Post EEO Posters
- Include the EEO Tag Line in Employment Advertising
- Keep Records
- Permit OFCCP Access to Books and Records During a Complaint Investigation or Compliance Evaluation
- File an Annual EEO-1 Report

Don't Discriminate

Title VII of the Civil Rights Act of 1964, as amended (Title VII), is a Federal law that protects individuals against employment discrimination. Executive Order 11246 is similar to Title VII. Executive Order 11246 prohibits Federal contractors and subcontractors from engaging in workplace employment discrimination on the basis of race, color, religion, sex, or national origin.

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What is Employment Discrimination?

Employment discrimination takes different forms. Employment discrimination is illegal and generally results when a person is treated differently (usually less favorably) because of his or her race, color, religion, sex, or national origin. In addition, employment discrimination can result when a neutral policy or practice has an adverse impact on the members of any race, sex, or ethnic group and the policy or practice is not job related or required by business necessity.

Here is an example of prohibited employment discrimination:

Alpha Production Company needs to hire entry-level laborers. The job requires heavy lifting and physical exertion, but does not require any technical skill. Alpha Production believes that all of its employees should have a high school diploma. So the company does not consider applicants who did not finish high school for the laborer job.

The high school diploma requirement disqualifies a greater number of Hispanic candidates for the laborer job at Alpha Production than Non-Hispanic White candidates. According to the most recent Census data, in the counties from which Alpha Production draws its applicants for laborer jobs, 94.2% of the white population 18 years and older has completed high school, but only 46.9% of the Hispanic population 18 years and older has completed high school. Alpha Production could not provide a business justification for using the high school diploma requirement. Thus, Alpha Production has engaged in prohibited discrimination.

Be Very Careful With Employment Tests:

Professionally developed tests can be used to make employment decisions, so long as the tests are fair and nondiscriminatory. You should be aware of the legal requirements that apply when tests and other assessment instruments are used to select employees. We recommend reviewing the guide developed by O*Net and titled *Testing and Assessment: An Employer's Guide to Good Practices*, which is available on the DOL website at <http://www.onetcenter.org/guides.html>. In addition, you might consult legal counsel or a Human Resource advisor before instituting any employment tests.

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Post EEO Poster

Federal contractors are required to post OFCCP's Equal Employment Opportunity Poster in a conspicuous place. A good place to post it is in a locker or lunchroom or an area where employees can take breaks. You can obtain the Equal Employment Opportunity Poster by contacting the nearest OFCCP office. A Directory of OFCCP offices is found in Part III of this guide. You can see a sample poster on the OFCCP website at <http://www.dol.gov/esa/regs/compliance/posters/pdf/eopost.pdf>.

Include EEO Tag Line in Employment Advertising

Federal contractors are required to state in all solicitations or advertisements for employment that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Keep Records

Federal contractors are required to maintain any personnel or employment records made or kept by the contractor.

Examples of records that must be maintained:

- Job descriptions
- Job postings and advertisements
- Records of job offers
- Applications and resumes
- Interview notes
- Tests and test results
- Written employment policies and procedures
- Personnel files

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Time Periods for Keeping Employment Records:

- ✓ Two years from the date of the making of the personnel record or the personnel action, whichever occurs later.
- ✓ But contractors with fewer than 150 employees *or* a contract of less than \$150,000 have to keep records for only one year.

Permit OFCCP Access to Books and Records During a Complaint Investigation or Compliance Evaluation

When a complaint is filed against a Federal contractor, or when a Federal contractor is selected to undergo a compliance evaluation, the contractor is obligated to allow OFCCP access to its premises for the purpose of conducting an on-site investigation. The contractor must permit OFCCP to inspect and copy the books and records that may be relevant to the matter under investigation and pertinent to compliance with the requirements of Executive Order 11246.

File An Annual EEO-1 Report

The Standard Form 100, Employer Identification Report (EEO-1 Report) requires that employers report on the number of employees by race, ethnicity and gender for each of nine job categories. The EEO-1 Report must be filed annually, not later than September 30, by:

- All Private employers that are subject to Title VII and have 100 or more employees.
- All Federal contractors with 50 or more employees that have either (1) a contract, subcontract, or purchase order of \$50,000 or more; or (2) serve as a depository of Government funds in any amount; or (3) is a financial institution that serves as issuing and paying agent of U.S. Savings Bonds and Savings Notes.

The Joint Reporting Committee (JRC), which is comprised of representatives from the Department of Labor and the Equal Employment Opportunity Commission, handles the processing of EEO-1 Reports. EEO-1 Reports may be filed electronically through a secure web-based internet or may be filed in paper format. More information on the EEO-1 Report can be obtained from any of the following contacts:

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Website:

www.eeoc.gov/eo1survey

Email:

e1.techassistance@eeoc.gov

Mail:

Equal Employment Opportunity Commission
EEO-1 Joint Reporting Committee
P.O. Box 19100
Washington, DC 20036-9100

Telephone:

1-866-286-6440 (toll free)

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**II. SUGGESTED EMPLOYER PRACTICES THAT CAN HELP
SMALL BUSINESSES COMPLY WITH SOME OF THE
AFFIRMATIVE ACTION PROGRAM REQUIREMENTS**

There are a number of actions a contractor might take to ensure that its employment practices are not limiting the employment opportunities of the members of any gender, race, or ethnic group. Following are examples of employer practices that foster equal employment opportunity and can help small businesses comply with some of their affirmative action program requirements.

Recruit To Attract Qualified Candidates

Whether you are required to recruit broadly to address an identified problem in your workforce, or you just want to ensure that recruiting efforts reach all qualified applicants, the following practices are effective in promoting equal employment opportunity:

1. Identify several “recruitment sources” for women and minorities. Recruitment sources include schools, colleges, government agencies, such as the local employment service office, and community-based organizations that help minorities or women obtain job skills and employment. OFCCP makes this part easy – we provide a list in each geographic region of many recruitment sources. Just contact the OFCCP office nearest to your location and we’ll send you a list. You don’t have to use a recruitment source from the OFCCP list; it is just a list we have assembled to make it easy for you to identify possible recruitment sources. You may have, or find out about, some other recruitment source in your community that is not on the list – feel free to use them.
2. Send the recruitment sources a letter telling them about job openings and invite them to refer qualified applicants for the job. We have provided sample letters that you can use, or modify, as you like, at Appendix I and II. You should send the letters out in advance of the time you want to fill the job so that the recruitment source has enough time to refer applicants. Thirty days is ideal, but try to give as much advance notice as possible. Also, include in the letter a description of the job duties and a listing of any

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required job qualifications. Keep a file with a copy of all the letters you send out to recruitment sources – this will help you with the next step.

We find that it is often helpful to invite representatives of the recruitment sources to tour your facility and learn first-hand about what you do – this helps them explain to people what kind of employment opportunities you have. Furthermore, you can call the recruitment source and discuss the types of jobs that you have and the types of skills that applicants need.

3. Monitor whether the recruitment source was able to refer any qualified applicants for the jobs. If over several job openings, a recruitment source has not referred any qualified applicants, try a new recruitment source from the OFCCP list, or one that you have identified in another way.

Audit Your Employment Practices To Prevent Discrimination

Employers that periodically perform self-audits of their employment practices are much better able to avoid employment barriers and ensure that they are providing equal opportunity for applicants and employees. There are three kinds of self-audits that you can do:

- ✓ Self-audit before or shortly after you make an employment decision, such as a hiring or promotion decision.
- ✓ Self-audit where female and minority workers are or are not within your organization.
- ✓ Self-audit the way your personnel decisions, like hiring, have affected women and minorities over a longer period of time, e.g., a quarter or year.

Here is how to perform each kind of self-audit:

- ✓ **Self-audit before or shortly after you make an employment decision, like a hiring or promotion decision.**

This self-audit focuses on employment qualifications or standards used in making various employment decisions and how women and minorities fared in those decisions. This generally involves a comparison of applicants or employees who are competing for a particular job or promotion or to retain a particular job. This self-audit should be conducted as soon after an employment decision is made as possible. You can even do a self-audit of a proposed employment decision, to ensure that there is no discrimination, before the final decision is made. Here are some examples of what information about the employment decision you should consider:

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- Were there women and minority **applicants**? What were their qualifications? How did their qualifications compare to the qualifications of the people who were hired? Why did the decision-makers select those hired and not the women and minority applicants who seemed to have comparable qualifications? Were all the qualifications necessary for successful performance of the job?

This part of the audit should help you determine whether job qualification standards were uniformly applied to all job applicants or whether exceptions were made or whether the company deviated from its own written hiring procedures or established hiring practices.

- Were there women and minorities who were eligible for a **promotion**? What were the promotion decisions based on, e.g., performance in another job? How did the women and minorities who were eligible for promotion compare to other candidates? If their qualifications seemed as good as the qualifications of the persons who were promoted, ask the decision-makers why they promoted who they did. Were any of the factors used in making the promotion decision not really necessary for successful job performance?

This part of the audit should determine whether standards are applied equally to all employees and whether qualified minority and female employees were passed over during the promotion process in favor of male or nonminority employees with lesser qualifications.

- Were women and minorities **terminated**? What were the factors relied on in making the termination decisions? If the women and minorities were terminated for offenses similar to those committed by nonminorities or men who were not terminated, ask why. Review the factors used in making the termination decision to determine whether any of them were not really necessary for successful performance in the jobs from which the employees were terminated.

This part of the audit should determine whether standards are being applied equally to all employees and whether minority and female employees are terminated in circumstances in which nonminorities or male employees would not have been terminated.

- Keep records of what you did in the self-audit and document what results were found. If there are any decisions that seem suspicious and cannot be justified by legitimate factors, you should take action to correct the problem(s).
- Some additional steps to foster equal employment opportunity are:
 - Periodically provide training to supervisors on how to avoid unlawful employment discrimination when making employment decisions.
 - Establish EEO performance as a performance standard for managers and supervisors.

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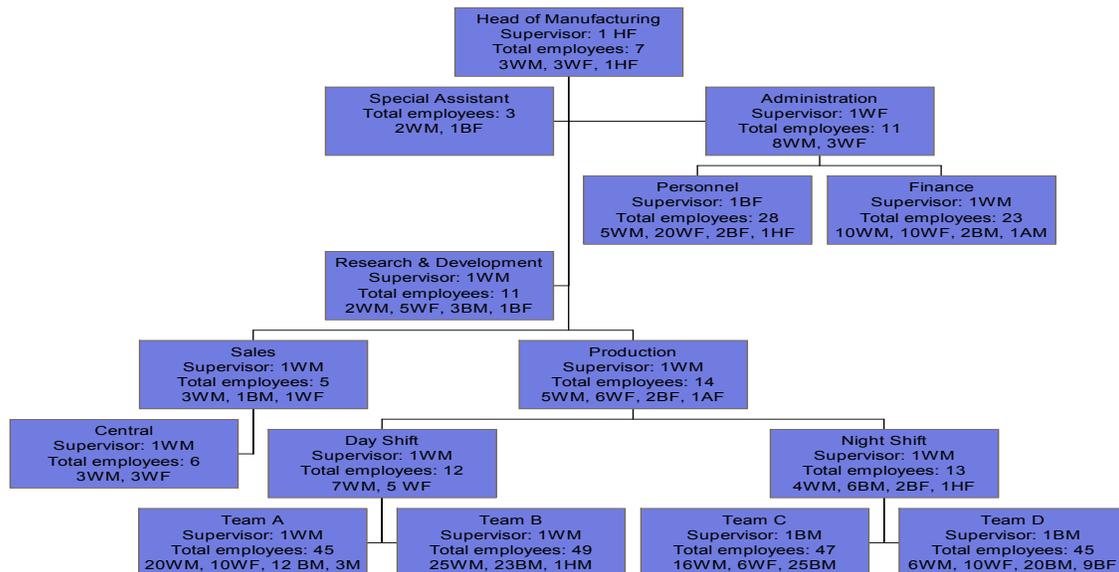
- ✓ **Self-audit where female and minority workers are or are not within your organization.**

Review where the female and minority employees work within your organizational structure. A helpful way to do this is to identify the gender, race, and ethnicity of each employee for each job within each department on an organizational chart. Look for concentrations of female or minority employees, especially in lower-paying jobs. Similarly, look for areas where female and minority employees seem to be absent or poorly represented, especially in higher-paying jobs. Also, look at the ways employees are promoted from lower ranking jobs to the higher-ranking jobs.

This self-audit may suggest potential problems that require further investigation. One common problem that might be uncovered by this self-audit is the practice of steering women to different jobs based on stereotypical beliefs about physical or intellectual qualifications, or temperament as well. For example, a manufacturing company has a number of openings for two entry-level jobs. One of the entry-level jobs involves heavy lifting and pays more than the other job. The manufacturer engages in sex-based discrimination when it hires only male applicants for the job that involves heavy lifting, and hires only female applicants for the other entry level job.

In general, jobs requiring the same qualifications and duties while having dissimilar rates of pay, promotional opportunity, access to training, better benefits / perks, etc., should be audited.

An Organizational Display allows you to see how your company's workforce is structured and where in that structure women and minorities are represented or absent. Here is what an Organizational Display looks like:



Note that it shows each department, and the race/sex of the supervisor(s) and employees within each department, and how all of the departments relate to each other.

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- ✓ **Self-audit the way your personnel decisions, like hiring, have affected women and minorities over a longer period of time, like a quarter or year.**

This self-audit uses statistics and works well when you are reviewing a number of employment decisions made over a period of time. OFCCP will be offering on its web site in the near future a Self-Audit Tool, in Excel format, that you can download to help you perform this type of audit. The Self-audit Tool provides directions on how to use it. In order for the Self-audit Tool to be of benefit to your company, you need to gather and keep the following information:

1. Group similar jobs into “job groups” (based on similarity in content, pay rates and opportunities). To keep track of these job groups, give each one a unique name, such as job group “1A.” Identify the gender, race or ethnicity of each employee currently in each of the job groups and make some record of this.

What is meant by similar content: this refers to duties and responsibilities of the job titles that make up the group. Jobs requiring significantly different skills or qualifications (such as a college degree or a certain number of years of job-related experience) should not be grouped together.

What is meant by similar pay rates: this refers to wage rate or salaries of the job titles that make up the job group. Large apparent differences in pay suggest an inappropriate job grouping.

What is meant by opportunities: this refers to the ability to take advantage of promotion and training opportunities, transfers, and other employment benefits. The employees in each of the grouped jobs should be eligible to be promoted to similar positions.

An illustration of how job titles may be grouped is provided in the sample AAP that is available at: <http://www.dol.gov/esa/regs/compliance/ofccp/pdf/sampleaap.pdf>. You should note the examples shown on pages six and seven.

2. Keep track of the race, sex and ethnicity of all applicants for each job in the job group and keep track of the race, sex and ethnicity of all new hires and employees who were eligible for promotion into jobs within the job group. Maintain similar records of all employees whose employment is terminated.

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III. GETTING HELP FROM OFCCP

If you need help, contact us directly via letter, telephone (1-800-397-6251), or through our web site.

- The OFCCP web site offers a wide range of information relative to the laws and program areas that affect Federal contractors. You may access the web site at www.dol.gov/esa/ofccp/index.htm.
- If you prefer, you may contact one of our Regional offices on the OFCCP web site at <http://www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm> or you may contact one of our District/Area offices that services your local area, by selecting your State, at the web site <http://www.dol.gov/esa/contacts/ofccp/ofnation2.htm> for compliance assistance.

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APPENDIX I - Sample Letter to Recruitment Source

(Date)

Dear (Agency Representative),

As a government contractor, (Name of Contractor), must comply with the provisions of Executive Order 11246, as amended, and other existing laws related to Equal Employment Opportunity (EEO). Part of our commitment to EEO is to take affirmative action to ensure that job seekers are recruited; job applicants are considered for employment opportunities; and employees are treated without regard to their race, color, religion, sex, national origin, or status as a qualified individual with a disability or Vietnam era or other protected veteran.

You can support and share in our commitment when you assist us with our employment needs. As we contact you for assistance in filling specific open positions, we wish your help in identifying qualified applicants for consideration. Whenever possible, please refer qualified minorities, women, persons with disabilities, Vietnam era veterans, and other protected veterans.

Although, we specifically have requested that (Name of Source) refer minority group members and women, (Name of Contractor) welcomes referrals of all qualified applicants regardless of their race, color, religion, sex, national origin, or status as a qualified individual with a disability or protected veteran.

Your assistance in referring all qualified candidates will help us to achieve our commitment to Equal Employment Opportunity. Thank you in advance for your cooperation.

Sincerely,

Human Resources Manager
EEO Officer

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APPENDIX II - Sample Letter to Community Based Organization

(Date)

(Mexican American Community Services Agency)
(Street Address)
(City, State Zip)

Dear (Mr. or Ms. Name of Contact Person):

(Name of Contractor) is an equal opportunity and affirmative action employer that does not discriminate in employment and ensures equal employment opportunity for all persons regardless of their race, color, religion, sex, national origin, or status as a qualified individual with a disability or Vietnam era or other protected veteran. (Name of Contractor)'s policy applies to all terms and conditions of employment. To achieve our goal of equal opportunity, we maintain an affirmative action program through which we take good faith efforts to recruit, hire and advance in employment qualified minorities, women, persons with disabilities, Vietnam era veterans, and other protected veterans. We would appreciate the Mexican American Community Services Agency's assistance in (Name of Contractor) efforts to achieve its affirmative action and equal opportunity goals.

Therefore, we request that the Mexican American Community Services Agency refer qualified minorities, women, persons with disabilities, and protected veterans for available positions at (Name of Contractor). We have enclosed a list of our current employment openings to enable the Mexican American Community Services Agency to better identify qualified applicants.

Although, we specifically have requested the Mexican American Community Services Agency to refer minority group members and women, (Name of Contractor) welcomes referrals of all qualified applicants regardless of their race, color, religion, sex, national origin, or status as a qualified individual with a disability or protected veteran.

Sincerely,

EEO Coordinator

cc: Enclosure